

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE VASO ACTIVE PHARMACEUTICALS  
SECURITIES LITIGATION

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)  
) Master File No. 04-CV-10708-RCL  
)  
)

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EDWARD TOVREA,

)  
) Civil Action No. 04-CV-10851-RCL  
)  
)

Plaintiff,

v.

VASO ACTIVE PHARMACEUTICALS, INC.,  
JOHN H. MASIZ and JOSEPH J. FRATTAROLI,

Defendants.

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JAMES KARANFILIAN, Individually and On  
Behalf of Himself and All Others Similarly Situated,

)  
) Civil Action No. 04-CV-11101-RCL  
)  
)

Plaintiff,

v.

VASO ACTIVE PHARMACEUTICALS, INC.,  
STEPHEN G. CARTER and JOHN J. MASIZ,

Defendants.

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**ASSENTED TO JOINT MOTION AND [PROPOSED] ORDER TO  
CONSOLIDATE RELATED CASES**

Pursuant to Federal Rule of Civil Procedure 42(a), the parties hereto, by and through their undersigned counsel, hereby move to (i) consolidate Tovrea v. Vaso Active Pharmaceuticals, et al., 04-CV-10851-RCL, and Karanfilian v. Vaso Active Pharmaceuticals, et al., 04-CV-11101-RCL, for

all purposes with the Consolidated Class Action pending before this Court, entitled In re Vaso Active Pharmaceuticals Securities Litigation, Master Docket No. 04-10708-RCL, and (ii) close each of the Tovrea and Karanfilian actions on the Court's docket. These actions were included among many others that previously were ordered to be consolidated and closed, but it appears that they were not consolidated or closed due to a clerical error.

1) On May 11, 2004, this Court issued an Order (the "Consolidation Order") consolidating all securities class action lawsuits filed against the defendants under the caption "In re Vaso Active Pharmaceuticals Securities Litigation." The Court's Consolidation Order stated: "All of the individual cases, except case No. 04-10708-RCL, will be closed and terminated on the court's docket. All securities actions filed in this court, as related to the consolidated cases, will be consolidated with *In re Vaso Active Pharmaceuticals Securities Litigation*." (See Exhibit 1.) Among the cases in the caption of the Consolidation Order was Alipour v. Vaso Active Pharmaceuticals, et al., 04-CV-10877-RCL. (Id.)

2) On June 7, 2004, plaintiffs in the Alipour Group of cases, which included the Tovrea and Karanfilian actions, moved for, among other things, the appointment of the Alipour Group as Lead Plaintiffs and their counsel, Federman & Sherwood, as Lead Counsel. (See Exhibit 2.) On August 16, 2004, Federman & Sherwood provided notice to the Court that the firm withdrew as counsel to the Alipour Group and withdrew its motion that the Alipour Group be appointed Lead Plaintiffs and that Federman & Sherwood be appointed Lead Counsel, stating that the plaintiffs and the class members would not be prejudiced because they would be adequately represented by the Lead Plaintiff and Lead Counsel ultimately chosen by the Court. (See Exhibit 3.)

3) On November 4, 2004, the Court appointed Edwin Choi, Richard Cheng, and Joe H. Huback as the Lead Plaintiffs, Schiffrin & Barroway, LLP as Lead Counsel, and Shapiro, Haber & Umry as Local Counsel for the Class. (See Exhibit 4.) Approximately one month later, on

December 3, 2004, Lead Plaintiffs filed the Consolidated Amended Class Action Complaint (the "Complaint"). Since the time that the Court ordered that the securities actions relating to Vaso Active Pharmaceuticals be consolidated and closed, all such cases have been consolidated into Master Docket No. 04-CV-10708-RCL and then closed, except for the Tovrea action and the Karanfilian action. There has been no activity in either case since plaintiffs' counsel for the Alipour Group, Federman & Sherwood, withdrew, and the plaintiffs identified in each of those complaints are among the class being represented by Lead Plaintiffs and Lead Counsel.

4) Beginning in April 2005, the Lead Plaintiffs and their counsel entered into negotiations for a possible resolution of any claims relating to the allegations in the Complaint. On June 8, 2005, a letter was submitted to the Court notifying it that the parties had negotiated a resolution of the claims in the Vaso class action litigation. (See Exhibit 5.) As referenced in the letter, the parties are in the process of negotiating a final Stipulation and Agreement of Settlement and related exhibits to file with the Court. (See id.)

5) Counsel for both Tovrea and Karanfilian have no objection to the relief sought in this motion.

Therefore, in order to avoid any doubt as to whether there has been a complete settlement and release of the claims arising out of these litigations, the parties respectfully request, in accordance with the Consolidation Order, (i) that the Court consolidate both the Tovrea and Karanfilian actions (and any other related actions covered by the Consolidation Order but not yet

consolidated or closed) with In re Vaso Active Pharmaceuticals Securities Litigation, and (ii) that such actions be closed and terminated on the Court's docket.

Dated: September 1, 2005

/s/ Kay E. Sickles  
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KAY E. SICKLES (admitted *pro hac vice*)  
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**Local Counsel**

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**Attorneys for Defendant Vaso and the Individual Defendants**

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(202) 452-0900

**Co-Counsel**

**IT IS SO ORDERED:**

\_\_\_\_\_  
United States District Judge

Dated: \_\_\_\_\_

**CERTIFICATE OF CONFERENCE**

Counsel for Defendant Vaso and the Individual Defendants has conferred with counsel for both the Tovrea and Karanfilian plaintiffs who are unopposed to the relief sought in this motion.

/s/ Michael G. Bongiorno

Michael G. Bongiorno

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served in compliance with the Federal Rules of Civil Procedure on this 1<sup>st</sup> day of September 2005 upon all counsel of record.

/s/ Michael G. Bongiorno

Michael G. Bongiorno

## **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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DENNIS E. SMITH, On Behalf of Himself )  
and All Others Similarly Situated, )  
Plaintiff )

v. )

C.A. No. 04-10708-RCL

VASO ACTIVE PHARMACEUTICALS, )  
INC., STEPHEN G. CARTER and JOHN )  
J. MASIZ, ET AL )  
Defendants )

---

CHRISTOPHER PEPIN, Individually and )  
On Behalf of All Others Similarly Situated, )  
Plaintiff )

v. )

C.A. No. 04-10763-RCL

VASO ACTIVE PHARMACEUTICALS, )  
INC., STEPHEN G. CARTER and JOHN )  
J. MASIZ, ET AL )  
Defendants )

---

KOUROSH ALIPOR, Individually and )  
On Behalf of All Others Similarly Situated, )  
Plaintiff )

v. )

C.A. No. 04-10877-RCL

VASO ACTIVE PHARMACEUTICALS, )  
INC., STEPHEN G. CARTER and JOHN )  
J. MASIZ, ET AL )  
Defendants )

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MODHI GUDE and ARJI GAUTHAMI,  
On Behalf of Themselves and All Others  
Similarly Situated,

Plaintiff

v.

VASO ACTIVE PHARMACEUTICALS,  
INC., STEPHEN G. CARTER and JOHN  
J. MASIZ, ET AL

Defendants

---

C.A. No. 04-10789-RCL

ORDER FOR CONSOLIDATION

It is hereby ordered that the above-captioned cases be and they hereby are consolidated for all purposes. The consolidated cases shall be captioned "*In Re Vaso Active Pharmaceuticals Securities Litigation*" and they will bear docket no. 04-10708-RCL. All of the individual cases, except case no. 04-10708-RCL, will be closed and terminated on the court's docket. All securities actions filed in this court, as related to the consolidated cases, will be consolidated with *In Re Vaso Active Pharmaceuticals Securities Litigation*.

SO ORDERED.

/s/ REGINALD C. LINDSAY

United States District Judge

DATED: May 11, 2004



## **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS (BOSTON)**

IN RE VASO ACTIVE PHARMACEUTICALS  
SECURITIES LITIGATION

RICHARD PAGONA,

Plaintiff,

v.

VASO ACTIVE PHARMACEUTICALS, INC.,  
JOHN J. MASIZ, STEPHEN G. CARTER,

Defendants.

EDWARD A. TOVREA,

Plaintiff,

v.

VASO ACTIVE PHARMACEUTICALS, INC.,  
JOHN J. MASIZ, JOSEPH FRATTAROLI,

Defendants.

KIM BENEDETTO, Individually and On  
Behalf of All Others Similarly Situated,

JOSEPH BENEDETTO, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

VASO ACTIVE PHARMACEUTICALS, INC.,  
JOHN J. MASIZ, JOSEPH FRATTAROLI,

Defendants.

No. 1:04-CV-10708-RCL

**CONSOLIDATED**

No. 1:04-CV-11100-RCL

No. 1:04-CV-10851-RCL

No. 1:04-CV-10808-NG

DEAN DUMMER, Individually and On Behalf of All Others Similarly Situated,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
VASO ACTIVE PHARMACEUTICALS, INC.,	)	
JOHN J. MASIZ, JOSEPH FRATTAROLI,	)	
STEPHEN G. CARTER,	)	
	)	
Defendants.	)	
<hr/>		
RICHARD SHAPIRO, Individually and On Behalf of All Others Similarly Situated,	)	No. 1:04-CV-10819-NG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
VASO ACTIVE PHARMACEUTICALS, INC.,	)	
JOHN J. MASIZ, JOSEPH FRATTAROLI,	)	
	)	
Defendants.	)	
<hr/>		
JAMES KARANFILIAN, Individually and On Behalf of All Others Similarly Situated,	)	
	)	No. 1:04-CV-10720-NG
Plaintiff,	)	
	)	
v.	)	
	)	
VASO ACTIVE PHARMACEUTICALS, INC.,	)	
JOHN J. MASIZ, JOSEPH FRATTAROLI,	)	
	)	
Defendants.	)	
<hr/>		
JAMES KARANFILIAN, Individually and On Behalf of All Others Similarly Situated,	)	
	)	No. 1:04-CV-11101-RCL
Plaintiff,	)	
	)	
v.	)	
	)	
VASO ACTIVE PHARMACEUTICALS, INC.,	)	
STEPHEN G. CARTER, JOHN J. MASIZ,	)	
	)	
Defendants.	)	

**THE ALIPOUR GROUP'S MOTION FOR CONSOLIDATION, APPOINTMENT AS  
LEAD PLAINTIFF AND FOR APPROVAL OF SELECTION OF LEAD COUNSEL**

Movants Kourosh Alipour, Timmy Smith and Douglas Weymouth (collectively the "Alipour Group") move the Court pursuant to Fed. R. Civ. P. 42(a) and Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78u-4(a)(3)(B), as

amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), for an order: (a) consolidating the above-styled securities class actions and any subsequently filed related actions; (b) appointing the Alipour Group as Lead Plaintiff in the consolidated action and in any consolidated related action; and (c) approving the Alipour Group's selection of Federman & Sherwood as Lead Counsel and Alan L. Kovacs as Liaison Counsel.

In support of its motion, the Alipour Group submits: (1) a Memorandum of Law in Support of the Motion of the Alipour Group for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel, and (2) the Declaration of William B. Federman in Support of the Motion of the Alipour Group for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel.

Dated: June 7, 2004

Respectfully submitted,

s/Alan L. Kovacs

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of June, 2004, a true and correct copy of the above and foregoing instrument was mailed by First Class Mail, with sufficient postage prepaid thereon, to:

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s/Alan L. Kovacs  
Alan L. Kovacs



## **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS (BOSTON)**

IN RE VASO ACTIVE PHARMACEUTICALS )	No. 1:04-CV-10708-RCL
SECURITIES LITIGATION )	
_____ )	<b>CONSOLIDATED</b>

**NOTICE OF WITHDRAWAL OF FEDERMAN & SHERWOOD AND  
WILLIAM B. FEDERMAN AS COUNSEL OF RECORD AND WITHDRAWAL OF  
MOTION OF THE ALIPOUR GROUP FOR CONSOLIDATION, APPOINTMENT AS  
LEAD PLAINTIFF AND FOR APPROVAL OF SELECTION OF LEAD COUNSEL**

PLEASE TAKE NOTICE, the law firm of FEDERMAN & SHERWOOD and William B. Federman, hereby withdraw as counsel of record in this action. Plaintiff and respective Class Members will not be prejudiced by this withdrawal in that FEDERMAN & SHERWOOD, and William B. Federman, are not counsel for Lead Plaintiffs and are not in the management structure of Lead Plaintiff's counsel. There are qualified law firms currently seeking to be appointed as Lead Plaintiff's counsel, and Plaintiff will continue to be adequately represented by the Lead Plaintiff and the Lead Plaintiff's counsel ultimately chosen by the Court.

Furthermore, Plaintiffs Movants Kourosh Alipour, Timmy Smith and Douglas Weymouth (collectively the "Alipour Group") withdraw their Motion for Consolidation, Appointment as Lead Plaintiff and for Approval of Selection of Lead Counsel previously filed in this matter.

Dated: August 16, 2004

Respectfully submitted,

s/ William B. Federman  
WILLIAM B. FEDERMAN  
FEDERMAN & SHERWOOD  
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405/235-1560; FAX: 405/239-2112

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2004, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/ William B. Federman  
William B. Federman

## **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re VASO ACTIVE PHARMACEUTICALS SECURITIES LITIGATION	)	
	)	
	)	
	)	Master Docket No. 04-10708-RCL
This Document Relates To:	)	
	)	
ALL ACTIONS.	)	
	)	

ORDER ON APPOINTMENT OF  
LEAD PLAINTIFF AND LEAD COUNSEL

The plaintiffs, Edwin Choi, Richard Ching, and Joe H. Huback have moved (Dkt. #27) for the appointment of themselves as co-lead plaintiffs and for the appointment of the Law Offices of Schiffrin & Barroway, LLP (the “Schiffrin Office”) as lead counsel for the cases consolidated in the above-entitled matter (the “Consolidated Action”). The motions also seek approval of the Boston law firm of Shapiro, Haber & Urmy, LLP (the “Shapiro Firm”) as liaison and local counsel. Having considered these motions and similar motions of other plaintiffs, I order the following.

1. Pursuant to 15 U.S.C. §78u-4(a)(3)(B), I appoint Edwin Choi, Richard Cheng, and Joe H. Huback as interim co-lead plaintiffs, pending a determination of whether the Consolidated Action may proceed as a class action.

2. Pursuant to 15 U.S.C. §78u-4(a)(3)(B)(v) and Fed. R. Civ. P. 23(g)(2)(A), I appoint the Schiffrin Office as lead counsel, pending a determination of whether the Consolidated Action may proceed as a class action. I also approve the selection of the Boston law firm of the Shapiro Firm as local counsel for the lead plaintiffs.

3. Lead counsel shall be responsible for the following matters, on behalf of the

plaintiffs: (a) the coordination of the preparation, filing and service of all pleadings; (b) the coordination of the briefing and arguing of any motions; (c) the coordination of discovery, including the examination of witnesses in depositions; (d) the selection of counsel to act as spokespersons at all pretrial conferences and hearings before the court; (e) the coordination of all settlement negotiations with counsel for the defendants; (f) the coordination of the preparation for trial and the trial of this matter; and (g) the supervision of all other matters concerning the prosecution or resolution of the Consolidated Action. Lead counsel may delegate to other plaintiffs' counsel such parts of the foregoing responsibilities as lead counsel may deem appropriate.

No paper may be filed with the court or served on any defendant by a plaintiff without approval of lead counsel. No settlement negotiations shall be conducted by any plaintiff without the approval of lead counsel.

4. All counsel for plaintiffs in the Consolidated Action must submit to lead counsel detailed time reports reflecting hours of work expended by each attorney, his/her billing rate and the subject matter of the work. Time reports must be submitted on a quarterly basis, with the first report due not later than one month following entry of this order. Such reports must be made for each subsequent quarter thereafter on a schedule to be determined by lead counsel. The failure of counsel for any plaintiff to submit such reports in timely manner may result in the disallowance of such unreported time from reimbursement from any common fund which may be created in the Consolidated Action.

5. All papers filed with the court must be filed electronically in accordance with the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the



District of Massachusetts (“Local Rules”) and the rules and procedures outlined in the Electronic Case Filing and Administrative Procedures pamphlet and the Electronic Case Filing (“ECF”) User’s Manual. In the case of the filing of any electronic document constituting, supporting or opposing a dispositive motion or a discovery motion, the filing party must also deliver to the office of the clerk of this court, by mail or otherwise, a paper, courtesy copy, of such document.\* The courtesy copy of each such document must be stamped or otherwise prominently marked as follows: “Courtesy Copy - **Do Not Scan**,” and must be delivered to the office of the clerk within three business days following the electronic filing.

6. All counsel in the Consolidated Action, who have not previously done so, forthwith must register with the court to receive and file documents in electronic form in accordance with the court’s ECF system. Counsel who are not members of the bar of the District of Massachusetts, but who have been permitted to participate in this case pro hac vice need not register as described in the preceding sentence, so long as each such counsel has local counsel who has appeared in this case and is registered with the court’s ECF system (local counsel for the local plaintiffs will serve, of course, as local counsel for all plaintiffs).

Service of papers on all plaintiffs may be made by serving local counsel for the plaintiff (and thus lead counsel) electronically, in accordance with the Federal Rules of Civil Procedure, the Local Rules and the court’s ECF system as outlined in the Electronic Case Filing and Administrative Procedures pamphlet and the Electronic Case Filing User’s Manual.

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\* For purposes of this order the term “dispositive motion” includes a motion to dismiss, a motion for summary judgment, a motion for preliminary relief (including a motion for attachment for real or personal property) and a motion for the entry of judgment. The term “discovery motion” includes any motion in which the moving party seeks an order requiring that a person or entity provide information in any form to the moving party.

7. Co-lead plaintiffs must file a consolidated amended complaint in this Consolidated Action not later than thirty days from the date of this order. A response by the defendants to such complaint must be filed not later than thirty days from the filing of the consolidated, amended complaint.

8. The motions of Michael Berteletti (Dkt. #14); the Chea Group (Dkt. #16); the Vaso Active Plaintiff Group (Dkt. ##17 and 22); David Brody (Dkt. #36); and the Yungman Group (Dkt. #40) for appointment of lead plaintiffs and lead counsel are hereby DENIED.

8. This order supersedes any order that is in conflict with it and entered in the Consolidated Action or in any of the individual cases constituting the Consolidated Action.

SO ORDERED.

/s/ REGINALD C. LINDSAY

United States District Judge

DATED: November 4, 2004

## **EXHIBIT 5**

# SHAPIRO HABER & URMY LLP

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June 8, 2005

## VIA ELECTRONIC FILING

Lisa Hourihan, Courtroom Clerk to  
The Honorable Judge Reginald C. Lindsay  
United States District Courthouse  
1 Courthouse Way  
Boston, MA 02210

Re: *In re Vaso Active Pharmaceuticals Sec. Litig.*  
Case No. 04 Civ. 10708

Dear Ms. Hourihan:

We are writing to advise the Court that the parties have negotiated a resolution of the above-referenced litigation, subject to the approval of the Court pursuant to Rule 23. We have already executed a Memorandum of Understanding, which outlines the substantive terms of the settlement. We plan to negotiate a Stipulation of Settlement and to prepare the exhibits for that document for a filing with the Court as soon as possible.

Please do not hesitate to contact me or counsel for the defendants if you have any questions.

Sincerely yours,



Thomas G. Shapiro  
Liaison Counsel for Plaintiffs

TGS/sg

cc: Kay E. Sickles (via facsimile)  
Richard S. Kraut (via facsimile)  
Jeffrey Rudman (via facsimile)  
Michael Bongiorno (via facsimile)